HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION Nos.6203, 6204, 6205, 6206, 6207, 6208, 6209, 6210, 6211, 6212, 6213, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221 AND 6222 OF 2007

WRIT PETITION No. 6203 OF 2007

Between:

Anil Kumar

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6204 OF 2007

Between:

S. Viswanathan

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6205 OF 2007

Between:

Mahesh Kumar

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6206 OF 2007

Between:

P. Sree Ramana

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6207 OF 2007

Between:

O. Sujata

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6208 OF 2007

Between:

Ravi Kumar Menon

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6209 OF 2007

Between:

Sanjay Kumar

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6210 OF 2007

Between:

M. Harish Kumar

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6211 OF 2007

Between:

K. Sreenivasa Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6212 OF 2007

Between:

M.S. Niraja

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District

and two others

...Respondents

WRIT PETITION No. 6213 OF 2007

Between:

Susarla Sai Krishna

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6214 OF 2007

Between:

D. Suresh

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6215 OF 2007

Between:

Subramanya Bhat

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6216 OF 2007

Between:

Y.V. Gangadhar Rao

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6217 OF 2007

Between:

P. Srinivasa Rao

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6218 OF 2007

Between:

A. Ganga Raju and another

…Petitioners

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6219 OF 2007

Between:

Naveen Reddy

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6220 OF 2007

Between:

V. Raghavendra Rao and another

…Petitioners

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6221 OF 2007

Between:

N. Venkateswara Rao and another

…Petitioners

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 6222 OF 2007

Between:

Swatantra Bharathi

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

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: COMMON ORDER :

Counsel for the petitioners : Shri D. Prakash Reddy,
Senior Advocate assisted by Shri Harender Pershad

Counsel for respondent No.1 : Shri P. Radhakrishna

Counsel for respondent No.2 : Shri G. Vidyasagar

Counsel for respondent No.3 : Smt. Kalpana Ekbote

July 17, 2007

Per G.S.SINGHVI, CJ

The above noted writ petitions have been filed by purchasers/occupiers of building known as Sree Kalyan Plaza for quashing final notices dated 15-2-2007 issued by Commissioner, Malkajgiri Municipality, Ranga Reddy District for removing the alleged setback violations.

The prayer of the petitioners is founded on the assertion that at the time of purchase of different portions of Sree Kalyan Plaza from its owner and builder Shri V. Krishna Rao (respondent No.2 herein), they did not know of any setback violation. According to them, the builder constructed the apartments in Plot Nos. 706 and 707, Survey No. 218/1 of Defence Colony, Malkajgiri Municipality (for short, 'the Municipality') and they purchased different portions under registered sale deeds; that even though the impugned notice makes a reference to provisional order dated 19-8-2003 issued under Sections 228 (1) and (2) of Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') and confirmation order dated

29-8-2003 issued under Section 228 (3) of the Act, no show cause notice and opportunity of hearing was given to them; that the alleged violations made by the builder are within the permissible limits and that they cannot be deprived of their property without following the procedure established by law and without complying with the rules of natural justice.

In the counter-affidavit filed by him, Shri D. John Samson,

Commissioner, Malkajgiri Municipality has averred as under:

(i) that in 2002-2003, respondent No.2 Shri V. Krishna Rao and Shri D.V. Raghava Rao applied for permission for construction of apartments in Plot Nos. 706 and 707, Survey No. 218/1, Defence Colony;

(ii) that Hyderabad Urban Development Authority granted technical approval for stilt + ground + four floors vide permission No. 7906/P4/H/2002, dated 11-2-2003 and the plans were released by the Municipality vide proceedings No. G2/195/2003, dated 7-4-2003 for the construction of residential apartments;

(iii) that provisional order dated 19-8-2003 was issued under Section 228 (1) and (2) of the Act and confirmation order dated 29-8-2003 was issued under Section 228 (3) of the Act requiring the builder to remove the violations;

(iv) that provisional order was served on the watchman of the builder viz., Shri G. Narasaiah, but the builder did not respond to the notice and, therefore, confirmation order was issued on 29-8-2003.

According to Shri Samson, the petitioners had purchased apartments after issue of confirmation order under Section 228 (3) of the Act and, therefore, it was not necessary to issue notices to them.

In paragraphs 4 and 5 of the counter affidavit filed by him, the builder Shri V. Krishna Rao has averred as under:

> "4. This respondent came to know about the proceedings issued by the municipality dated 15.2.2007. The said final notice dated 15.2.2007 was not communicated to the second respondent. The notice refers to the provisional order dated 19.8.2003 issued under section 228 (1) (2) of A.P. M Act, 1965 and confirmation order dated 29.8.2003 issued under section 228 (3) of the Act. The said proceedings were not served on me. I am also not aware of the orders passed in W.P.No.879 of 2005 dated 22.9.2007. The proceedings dated 15.2.2007 do not refer to any specific set back violations.
>
> 5. It is submitted that the provisional order dated 19.8.2003 is filed as material papers by the first respondent. In the provisional order dt. 19.8.2003

it was alleged that there was a deviation in the set back on front portion and two sides. The deviations are 0.6 inches, 1 feet and 0.9 inches respectively and violation of tot-lot area on 49.08 inches. Whereas the final confirmation order dt 29.8.2003 refers to making constructions without leaving the tot-lot area. Without admitting that the said notices were served on me, I respectfully submit that as per the confirmation order violation is only with reference to tot-lot area. In fact tot-lot area is provided in the building complex. Thus there is no violation."

We have heard learned counsel for the parties and carefully scrutinized the record. The notice issued to one of the petitioners, namely, Anil Kumar (petitioner in Writ Petition No.6203 of 2007) reads as under:

"**OFFICE OF THE MUNICIPAL COUNCIL MALKAJGIRI**
RANGA REDDY DISTRICT

FINAL NOTICE

Lr.No.G2/226/2005 **Dt.15.02.2007**

Sub: Malkajgiri Municipality – Illegal Constructions in Defence Colony-W.P.879 of 2005 on the file of Hon'ble High Court filed by O.Yella Reddy – Notice issued as per the orders of Hon'ble High Court – regarding.

Ref: 1. This Office Provisional Order, dated 19-8-2003 issued under section 228 (1) & (2) of APM Act 1965.
2. This Office Confirmation Order, dated 29-8-2003 issued under section 228 (3) of APM Act, 1965.
3. Judgment of Hon'ble High Court in W.P.No.879 of 2005, dated: 22-01-2007.

***

Please take notice that, you have constructed residential apartments in Plot No. 706 & 707, Sy.No.218/1 of Defence Colony Malkajgiri by deviating to the Technically approved plan by HUDA vide Lr.No.7906/P4H1/2002, Dt.11-2-2003 and this office Proceedings No. G2/195/2003, dt. 7-4-2003 i.e. set back violations.

As per the Judgment of the Hon'ble High Court in W.P.No.879 of 2005, you are hereby directed to remove the set back violations voluntarily within a period of one month from the date of receipt of this notice, failing which the same violations will be removed departmentally.

Commissioner
Malkajgiri Municipality

To

Sri Y. Anil Kumar, Flat No. 201,
Plot No. 706 & 707, Sree Kalyan Plaza,
Sy.No.218/1,
Defence Colony,
Malkajgiri."

In the context of the statement contained in the above reproduced notice and the averments contained in the affidavit of respondent No.2, we asked Shri P. Radhakrishna, learned counsel for the Municipality to show that provisional and confirmation orders passed on 19-8-2003 and 29-8-2003 respectively were served on the said respondent in accordance with Section 353 of the Act. In reply, learned counsel fairly stated that the records made available to him do not show that either of the two orders was tendered to respondent No.2 or that the alternative mode was adopted, because respondent No.2 was not found at the given address. He, however, submitted that service of notice on the watchman of the building, Shri G. Narasaiah should be treated as sufficient for the purpose of taking action to remove the violations made at the time of construction of the building.

In our opinion, there is no merit in the submission of the learned counsel for the Municipality. Section 353 of the Act, which prescribes method of serving documents etc., reads as under:

> "**353. Method of serving documents :--** (1) When any notice, or other documents is required by this Act or by any rule, bye-law, regulation or order made under it, is to be served on or sent to any person, the service or sending thereof may be effected—
>
> (a) by giving or tendering the said document to such person; or
>
> (b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or
>
> (c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioner by sending the same to him by post registered; or
>
> (d) if none of the means aforesaid be available, by fixing the same in some conspicuous part of such place of abode or business.
>
> (2) Where the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the notice or document, and in the case of joint owners and occupiers it shall be sufficient to serve it

on, or sent it to, one of such owners or occupiers.

(3) Whenever in any bill, notice, form or other document, served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall save as otherwise provided in this Act, be calculated from the date of such service or sending."

A bare reading of the above reproduced provision makes it clear that the notice required to be given under Section 228 (1) and (2) of the Act has to be tendered to the affected person. The alternative mode envisaged in clauses (b), (c) and (d) of sub-section (1) of Section 353 can be resorted to only if the person to whom the notice is addressed is not found or does not reside in the municipality or the notice cannot be served in accordance with clauses (b) or (c).

In the present case, the provisional order issued under Section 228 (1) and (2) and confirmation order issued under Section 228 (3) are not shown to have been tendered to the builder i.e., respondent No. 2. Therefore, the same cannot be treated as served on the said respondent.

As a sequel to the above, it must be held that notices dated 15.2.2007 issued to the petitioners for removing the violations on the assumption that the builder had not done so despite service of provisional and confirmation orders cannot be sustained.

In the result, the writ petitions are allowed and the impugned notices are quashed. However, with a view to avoid unnecessary litigation on the ground of violation of the procedural aspect or the rules of natural justice, we deem it proper to issue the following directions:

1) The petitioners and respondent No.2 will be deemed to have been put on notice regarding violations of the sanctioned plan.

2) Within one month from today, the petitioners and respondent No.2 may submit their written objections/ representations against the

proposed removal of violations. They shall submit their representations to Deputy Commissioner, Greater Hyderabad Municipal Corporation, Malkajgiri Circle (this is being done because Malkajgiri Municipality has merged in Greater Hyderabad Municipal Corporation).

3) Within next six weeks, the competent authority shall hear the petitioners and respondent No.2 or their authorized representatives, wherever a written request for hearing is made, consider the representations/objections and pass speaking orders in the matter of removal of the violations or otherwise.

4) If the competent authority comes to the conclusion that respondent No.2 has not violated the sanctioned plan, then the notices issued to the petitioners and respondent No.2 shall be dropped. If, on the other hand, the competent authority comes to the conclusion that the building has been constructed in violation of the sanctioned plan, then the final order be communicated to the petitioners and respondent No.2 and they be given reasonable time to remove the violations.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 17, 2007

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